

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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In the Matter of :
NELSON GALVANIZING INC. : COMPLAINT AND NOTICE OF
 : OPPORTUNITY FOR HEARING
 :
Respondent. :
 : Docket No. II EPCRA-91-0207
Proceeding under Section 325(c) :
of Title III of the Superfund :
Amendments and Reauthorization Act.:
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COMPLAINT

Complainant, as and for her Complaint against
Respondent, hereby alleges:

1. This is a civil administrative action instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11001 et seq. [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")].
2. The Complainant, Barbara Metzger, Director, Environmental Services Division, United States Environmental Protection Agency ("EPA"), Region II, has been duly delegated the authority to institute this action.
3. Respondent is Nelson Galvanizing Inc.

340368



4. Respondent maintains a facility that is the subject of this Complaint at 11-02 Broadway, Long Island City, New York 11106 (hereinafter, "Respondent's facility").

5. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, respectively, EPA promulgated the Toxic Chemical Release Reporting; Community Right-to-Know Rule, 40 C.F.R. Part 372.

6. Under Section 313 of EPCRA and 40 C.F.R. § 372.22, owners or operators of a facility subject to the requirements of Section 313(b) are required to submit annually, no later than July 1 of each year, a Toxic Chemical Release Inventory Reporting Form, EPA Form 9350-1 (hereinafter, "Form R"), for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, imported, processed, or otherwise used during the preceding calendar year in quantities exceeding the established toxic chemical thresholds. The completed and correct Form R is required to be submitted to the Administrator of the EPA and to the State in which the subject facility is located.

7. This Complaint serves notice that Complainant has reason to believe that Respondent failed to submit timely, complete and correct Toxic Chemical Release Inventory Reporting Forms as required by Section 313 of EPCRA, 42 U.S.C. § 11023, and the Federal regulations that set out in greater detail the Section 313 reporting requirements, 40 C.F.R. Part 372.

8. Respondent is a corporation organized pursuant to the laws of the State of New York.

9. Respondent is a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

10. Respondent is an owner of a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3.

11. Respondent is an operator of a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3.

12. Respondent's facility has 10 or more "full time employees" as that term is defined by 40 C.F.R. § 372.3.

13. Respondent's facility is in Standard Industrial Classification Code 3479.

14. Respondent's facility is subject to the requirements of EPCRA, Section 313(b), 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22.

15. On or about December 15, 1989, authorized representatives of EPA conducted an inspection of Respondent's facility to determine whether Respondent was in compliance with the Toxic Chemical Release Reporting requirements.

COUNT 1

16. Complainant repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "15" with the same force and effect as if fully set forth herein.

17. During the above-referenced inspection, EPA representatives determined that during 1987, Respondent had otherwise used (as defined in 40 C.F.R. § 372.3) approximately 162,000 pounds of sulfuric acid, Chemical Abstracts Service ("CAS") Registry Number 7664-93-9.

18. Sulfuric acid is listed under 40 C.F.R. § 372.65.

19. The established threshold amount for reporting a chemical otherwise used is 10,000 pounds for the applicable calendar year [40 C.F.R. § 372.25 (b)].

20. Sulfuric acid was otherwise used by Respondent in quantities exceeding the established threshold for reporting during the calendar year 1987 (40 C.F.R. § 372.25).

21. Respondent was required to submit by July 1, 1988 a complete and correct Form R for sulfuric acid for the calendar year 1987 to the Administrator of EPA and to the State of New York.

22. Respondent failed, in a timely manner, to submit to the Administrator and to the State of New York a complete and correct Form R for sulfuric acid for the calendar year 1987.

23. Respondent's failure to submit in a timely manner a complete and correct Form R for the above-described toxic chemical constitutes a failure or refusal to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. § 372.30.

COUNT 2

24. Complainant repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "15" with the same force and effect as if fully set forth herein.

25. During the above-referenced inspection, EPA representatives determined that during 1987, Respondent had otherwise used (as defined in 40 C.F.R. § 372.3) approximately 14,000 pounds of sodium hydroxide (solution), CAS Registry Number 1310-73-2.

26. Sodium hydroxide (solution) is listed under 40 C.F.R. § 372.65.

27. The established threshold amount for reporting a chemical otherwise used is 10,000 pounds for the applicable calendar year [40 C.F.R. § 372.25 (b)].

28. Sodium hydroxide (solution) was otherwise used by Respondent in quantities exceeding the established threshold for reporting during the calendar year 1987 (40 C.F.R. § 372.25).

29. Respondent was required to submit by July 1, 1988 a complete and correct Form R for sodium hydroxide (solution) for

the calendar year 1987 to the Administrator of EPA and to the State of New York.

30. Respondent failed, in a timely manner, to submit to the Administrator and to the State of New York a complete and correct Form R for sodium hydroxide (solution) for the calendar year 1987.

31. Respondent's failure to submit in a timely manner a complete and correct Form R for the above-described toxic chemical constitutes a failure or refusal to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. § 372.30.

COUNT 3

32. Complainant repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "15" with the same force and effect as if fully set forth herein.

33. During the above-referenced inspection, EPA representatives determined that during 1987, Respondent had otherwise used (as defined in 40 C.F.R. § 372.3) approximately 42,000 pounds of zinc compounds, CAS Registry Number N/A.

34. Zinc compounds are listed under 40 C.F.R. § 372.65.

35. The established threshold amount for reporting a chemical otherwise used is 10,000 pounds for the applicable calendar year [40 C.F.R. § 372.25 (b)].

36. Zinc compounds were otherwise used by Respondent in quantities exceeding the established threshold for reporting during the calendar year 1987 (40 C.F.R. § 372.25).

37. Respondent was required to submit by July 1, 1988 a complete and correct Form R for zinc compounds for the calendar year 1987 to the Administrator of EPA and to the State of New York.

38. Respondent failed, in a timely manner, to submit to the Administrator and to the State of New York a complete and correct Form R for zinc compounds for the calendar year 1987.

39. Respondent's failure to submit in a timely manner a complete and correct Form R for the above-described toxic chemical constitutes a failure or refusal to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. § 372.30.

COUNT 4

40. Complainant repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "15" with the same force and effect as if fully set forth herein.

41. During the above-referenced inspection, EPA representatives determined that during 1988, Respondent had otherwise used (as defined in 40 C.F.R. § 372.3) approximately 149,000 pounds of sulfuric acid, CAS Registry Number 7664-93-9.

42. Sulfuric acid is listed under 40 C.F.R. § 372.65.

43. The established threshold amount for reporting a chemical otherwise used is 10,000 pounds for the applicable calendar year [40 C.F.R. § 372.25 (b)].

44. Sulfuric acid was otherwise used by Respondent in quantities exceeding the established threshold for reporting during the calendar year 1988 (40 C.F.R. § 372.25).

45. Respondent was required to submit by July 1, 1989 a complete and correct Form R for sulfuric acid for the calendar year 1988 to the Administrator of EPA and to the State of New York.

46. Respondent failed, in a timely manner, to submit to the Administrator and to the State of New York a complete and correct Form R for sulfuric acid for the calendar year 1988.

47. Respondent's failure to submit in a timely manner a complete and correct Form R for the above-described toxic chemical constitutes a failure or refusal to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. § 372.30.

COUNT 5

48. Complainant repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "15" with the same force and effect as if fully set forth herein.

49. During the above-referenced inspection, EPA representatives determined that during 1988, Respondent had otherwise used (as defined in 40 C.F.R. § 372.3) approximately

12,000 pounds of sodium hydroxide (solution), CAS Registry Number 1310-73-2.

50. Sodium hydroxide (solution) is listed under 40 C.F.R. § 372.65.

51. The established threshold amount for reporting a chemical otherwise used is 10,000 pounds for the applicable calendar year [40 C.F.R. § 372.25 (b)].

52. Sodium hydroxide (solution) was otherwise used by Respondent in quantities exceeding the established threshold for reporting during the calendar year 1988 (40 C.F.R. § 372.25).

53. Respondent was required to submit by July 1, 1989 a complete and correct Form R for sodium hydroxide(solution) for the calendar year 1988 to the Administrator of EPA and to the State of New York.

54. Respondent failed, in a timely manner, to submit to the Administrator and to the State of New York a complete and correct Form R for sodium hydroxide (solution) for the calendar year 1988.

55. Respondent's failure to submit in a timely manner a complete and correct Form R for the above-described toxic chemical constitutes a failure or refusal to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. § 372.30.

COUNT 6

56. Complainant repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "15" with the same force and effect as if fully set forth herein.

57. During the above-referenced inspection, EPA representatives determined that during 1988, Respondent had otherwise used (as defined in 40 C.F.R. § 372.3) approximately 36,000 pounds of zinc compounds, CAS Registry Number N/A.

58. Zinc compounds are listed under 40 C.F.R. § 372.65.

59. The established threshold amount for reporting a chemical otherwise used is 10,000 pounds for the applicable calendar year [40 C.F.R. § 372.25 (b)].

60. Zinc compounds were otherwise used by Respondent in quantities exceeding the established threshold for reporting during the calendar year 1988 (40 C.F.R. § 372.25).

61. Respondent was required to submit by July 1, 1989 a complete and correct Form R for zinc compounds for the calendar year 1988 to the Administrator of EPA and to the State of New York.

62. Respondent failed, in a timely manner, to submit to the Administrator and to the State of New York a complete and correct Form R for zinc compounds for the calendar year 1988.

63. Respondent's failure to submit in a timely manner a complete and correct Form R for the above-described toxic

chemical constitutes a failure or refusal to comply with Section 313 of EPCRA, 42 U.S.C. § 11023, and with 40 C.F.R. § 372.30.

PROPOSED CIVIL PENALTY

64. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), authorizes the EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313, 42 U.S.C. § 11023.

65. Based upon the violations cited in this Complaint, upon the nature, circumstances, extent and gravity of the violations alleged, and upon the degree of culpability, as set forth in the Section 313 Enforcement Response Policy, the Complainant proposes that Respondent be assessed the following civil penalties for the violations alleged in this Complaint:

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|---|----------|
| COUNT 1 - Failure to submit a Toxic Chemical Release Inventory Reporting Form (Form R) for sulfuric acid for the reporting year 1987. | \$17,000 |
| COUNT 2 - Failure to submit a Toxic Chemical Release Inventory Reporting Form (Form R) for sodium hydroxide (solution) for the reporting year 1987. | \$ 5,000 |
| COUNT 3 - Failure to submit a Toxic Chemical Release Inventory Reporting Form (Form R) for zinc compounds for the reporting year 1987. | \$ 5,000 |
| COUNT 4 - Failure to submit a Toxic Chemical Release Inventory Reporting Form (Form R) for sulfuric acid for the reporting year 1988. | \$17,000 |
| COUNT 5 - Failure to submit a Toxic Chemical Release Inventory Reporting Form (Form R) for sodium hydroxide (solution) for the reporting year 1988. | \$ 5,000 |

COUNT 6 - Failure to submit a Toxic Chemical
Release Inventory Reporting Form
(Form R) for zinc compounds for the
reporting year 1988..

\$ 5,000

TOTAL PROPOSED PENALTY:

\$54,000

NOTICE OF
OPPORTUNITY TO REQUEST A HEARING

EPA intends to assess the total proposed penalty in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22 (hereinafter, "Consolidated Rules"). These rules provide you with the right to request a formal Hearing to contest any material fact(s) set forth in this Complaint or to contest the appropriateness of the amount of the proposed penalty. To avoid being found in default and having the above-cited penalty assessed without further proceedings, you must file a written Answer to this Complaint, including a request for a formal Hearing, with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, within twenty (20) days of receipt of this Complaint.

Your answer should clearly and directly admit, deny or explain each of the factual allegations in this Complaint of which you have any knowledge. Your Answer should contain (1) a definite statement of the facts that constitute the grounds of

defense, and (2) a concise statement of the facts that you intend to place in issue at the Hearing.

The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a Hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegation(s). Your failure to file a written Answer within twenty (20) days of receipt of this Complaint will constitute an admission of all facts alleged in the Complaint and a waiver of your right to a formal Hearing to contest any facts alleged or the penalty assessed in the Complaint. In such event, a Final Order of Default may be issued by the Regional Administrator, and/or the civil penalties proposed herein will be imposed without any further proceedings.

Any Hearing that you request will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). Hearings held on the appropriateness of civil penalties under EPCRA will be conducted in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. § 552 et seq.) and the Consolidated Rules; a copy of these rules accompanies this Complaint.

INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a Hearing, the EPA encourages settlement of this proceeding consistent with the provisions of

EPCRA. At an informal conference you may comment on the charges made in the Complaint, and you may also provide whatever additional information that you believe is relevant to the disposition of this matter, including (1) actions you have taken to correct the violation, (2) the effect the proposed penalty would have on your ability to continue in business, or (3) any other special circumstances you care to raise. EPA has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with you in an informal settlement conference, or to recommend that the Regional Administrator dismiss any or all of the charges, if the circumstances so warrant. Any request for such a conference or any questions that you may have regarding this Complaint should be directed to Stuart N. Keith, Attorney, Air, Waste and Toxic Substances Branch, Office of Regional Counsel, Region II, 26 Federal Plaza, New York, New York 10278, (212) 264-3583.

Please note that a request for an informal settlement conference does not extend the twenty (20) day period during which a written Answer and request for a Hearing must be submitted. The informal conference procedure may be pursued either as an alternative to or simultaneously with the adjudicatory Hearing procedure. However, no penalty reduction will be made simply because such a conference is held. Any settlement that may be reached as a result of such conference shall be embodied in a written Consent Agreement and Consent

Order to be issued by the Regional Administrator of the EPA, Region II, and signed by you or your representative. Your signing of such Consent Agreement shall constitute a waiver of your right to request a Hearing on any matter stipulated to therein.

If you have neither effected a settlement by informal conference nor requested a Hearing within the twenty (20) day period cited above, the assessed penalty will be imposed without any further proceedings.

PAYMENT OF PENALTY

Instead of filing an Answer, requesting a Hearing, or requesting an informal settlement conference, you may choose to pay the proposed penalty. Such payment should be made by sending a cashier's or certified check payable to the Treasurer, United States of America, in the full amount of the penalty assessed in this Complaint to the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region II, P.O. Box 360188M, Pittsburgh, Pennsylvania 15251. If you elect to pay the penalty in this manner, a copy of your letter transmitting the check and a copy of the check should be sent to the attention of the EPA attorney listed previously. Payment of the civil penalty does not satisfy your legal obligation to file a complete and accurate Toxic

Chemical Release Inventory Reporting Form (Form R). Failure or refusal to file Form R may subject you to additional civil penalties of up to \$25,000 per day for each violation.

Dated: July 26, 1991

Barbara Metzger
BARBARA METZGER, DIRECTOR
Environmental Services Division
U.S. Environmental Protection Agency
Region II
2890 Woodbridge Avenue
Edison, NJ 08837

TO: John Sweeney, President
Nelson Galvanizing, Inc.
11-02 Broadway
Long Island City, NY 11106

Enclosure

cc: Richard Williams, Esq.
Compliance Counsel
New York State Department of
Environmental Conservation

John Middelkoop, Director
Bureau of Hazardous Waste
Operations
New York State Department of
Environmental Conservation

bcc: Beth Crowley, EN-342
Linda Hall, 2ES-PTS
Kim Helper, 2OEP
Stuart Keith, 2ORC-AWTS

CERTIFICATE OF SERVICE

This is to certify that on the *13th* day of *SEPT.* 1991, I served a true and correct copy of the foregoing Complaint and copy of the Consolidated Rules of Practice by certified mail to John Sweeney, President, Nelson Galvanizing, Inc., 11-02 Broadway, Long Island City, New York 11106. I handcarried the original and a copy of the foregoing Complaint to the Regional Hearing Clerk.

Don A. Hearn